

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

10,890

FILE: B-194552

DATE: July 27, 1979

MATTER OF: Gillette Industries, Inc., d/b/a
La Crosse Garment Mfg. Co. DLG02367

[Protest Alleging Awarded Bid Was Nonresponsive]
DIGEST:

1. Failure of bidder to acknowledge receipt of IFB amendment which repeated, but did not change, IFB requirements was properly waived as minor informality since bidder is bound to requirements of IFB even though amendment was not acknowledged.
2. GAO dismisses protest against affirmative determination of low bidder's responsibility where award was preceded by favorable preaward survey, absent evidence of fraud or other circumstances not applicable here.

Gillette Industries, Inc. (Gillette), d/b/a La Crosse Garment Manufacturing Co., protests the award to Cecile Industries, Inc. (Cecile), under invitation for bids (IFB) No. DLA 100-79-B-0442, issued by the Defense Personnel Support Center (DPSC), Philadelphia, Pennsylvania. Gillette contends that Cecile's bid is nonresponsive for failing to acknowledge receipt of amendment No. 1 to the IFB prior to bid opening. Gillette is of the view that the amendment had an effect on price and delivery dates. Gillette also contends that Cecile is a nonresponsible bidder.

The subject IFB, a 100-percent small business set-aside, called for furnishing sleeping bags. Bids were opened April 5, 1979, and of the eight firms bidding, the low evaluated bid was submitted by Cecile in the amount of \$1,780,852.24. The second low bid was submitted by Gillette in the amount of \$1,798,622.50.

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The contracting officer states that the amendment was issued to correct several minor administrative errors which occurred during the issuance of the subject IFB and that Cecile's failure to acknowledge receipt of the amendment was properly waived as a minor informality in accordance with Defense Acquisition Regulation (DAR) § 2-405(iv)(B), (1976 ed.) which permits waiver where:

"* * * the amendment clearly would have no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or the relative standing of the bidders * * *."

Amendment 0001 added the following language to page 18 of the IFB (the schedule): "Prices offered will be based on FOB Destination and must include the value of material to be furnished by the Government." The contracting officer states that such language is usually included in the portion of an IFB which provides Government-furnished material to be used by the contractor, but the omission of that language from the subject IFB was immaterial here since the subject matter was discussed in other IFB provisions. With respect to the first portion of the added language, the contracting officer points to page 18 of the IFB which indicates that only f.o.b. destination bids are contemplated. Page 16 is referred to which reveals that clause D26 "Designation of F.O.B. Point" is applicable and this clause makes it clear that any bids offered on any basis other than that specified in the IFB will be rejected as nonresponsive. Moreover, we observe that clauses involving f.o.b. origin were not incorporated by reference into the IFB. Under these circumstances, we believe that bids on an f.o.b destination basis were already required by the IFB and the amendment added nothing in this regard.

Page 12 of the IFB contained clause C94-- "Provisions Relating to Material To Be Furnished By The Government (C&T Bailment System)"--which informed bidders that offered prices must contain

the value of material to be furnished by the Government. Paragraph "E" of that clause provides that upon delivery of end items, an administratively determined rate (in this instance \$22.92 per unit) will be deducted from the contract price and applied to cover the value of the Government material and the balance of the contract price will be paid to the contractor. Regardless of the amount of Government material used, the unit cost to the Government of each item accepted including Government material was not permitted to exceed the contract unit price for the item. Paragraph Q(b) of that clause further provides that "Trade discounts offered or discounts considered trade discounts in accordance with Clause D13, 'Discount Limitation,' will be computed on the basis of the full price offered, which includes the offeror's estimated value of Government material furnished under the Clothing and Textile Bailment System." We agree with the contracting officer that, since these provisions of the IFB required bidders to include in their prices the value of Government-furnished material, the information contained in the amendment with regard to this requirement was duplicative and not essential.

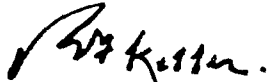
As to the remainder of amendment 0001, which relates to the delivery schedule for completed end items as set forth on pages 28 and 29 of the IFB, we concur in the contracting officer's conclusion that the added language only restated requirements already in the IFB. The change in the word "Description" to "Destination" is minor since the destinations of the delivery increments are identified on those same pages. Also, since the delivery increments and quantities are set forth on pages 28 and 29 of the IFB, the other information added by the amendment is merely a summary of the stated delivery schedule. The contracting officer reports that while the language of the amendment as it relates to the end item delivery schedule would seem to permit a 30-day delivery acceleration period not similarly available under the terms of the schedule appearing on pages

28 and 29, that same 30-day period is provided for under the terms of clause H52 "Delivery Requirements," incorporated by reference on page 22 of the IFB.

Based on the above, we believe that Gillette's failure to acknowledge receipt of the amendment was properly waived as a minor informality. We have held that where, as here, an amendment does no more than repeat what is already in the IFB, so that a bidder is bound to all material requirements without regard to the amendment, the failure to acknowledge the amendment does not require bid rejection. See Industrial Maintenance Services, Inc., B-190975, May 2, 1978, 78-1 CPD 339.

Gillette's second basis of protest is that Cecile is a nonresponsible bidder. The contracting officer reports that a favorable preaward survey preceded the award to that firm. We do not review such protests under our Bid Protest Procedures except where fraud by procuring officials is shown, or in other circumstances which are not applicable here. Mars Signal Light Company, B-193942, March 7, 1979, 79-1 CPD 164.

For the reasons stated, the protest is denied in part and dismissed in part.


Deputy Comptroller General
of the United States